

## **REMARKS**

### **I. Introduction**

Claims 1-44 and 47-76 are currently pending in this application. Claims 21-22, 26-27, 28, 37, 59-61, and 64 have been amended. Claims 69-76 have been added and claims 45-46 have been canceled. No new matter has been added. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

### **II. Claim Objections**

The Examiner has objected to claims 45 and 46 as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant has now canceled claims 45 and 46 and rewritten their contents in independent form as new claims 69 and 70, thus rendering this ground of rejection moot.

### **III. Claim Rejections - 35 U.S.C. § 112**

Claim 15 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In this regard, the Examiner states that the phrase "said health systems of said patient include neurological, respiratory, cardiovascular, urinary, and temperature health systems" is vague and indefinite. However, it is not understood how this phrase can reasonably be interpreted as meaning "any one of" the five listed health systems because claim 14, from which claim 15 depends, requires measures of risk corresponding to respective "health systems", i.e. more than one health system of the patient. Therefore, the claims require that each of the measures of risk corresponds to a different health system. Claim 15 adds to this the limitation that the health systems include the five specific health systems recited, and thus claim 15 requires five measures of risk, each one of these five measures corresponding to a corresponding one of the five health systems recited, as would be readily understood by persons skilled in the art. Applicant therefore respectfully requests that this ground of rejection be withdrawn.

Claims 22-24, 26, 29, 34-41, 43, 44-50, and 53-57 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which Applicant regards as the invention. In this regard, the Examiner states that the limitation "if" is a conditional statement without corresponding "else" statements. Applicant respectfully disagrees. The expressed basis for the objection is MPEP § 2106(II)C, which states that "Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation." However, this is completely different from the language of the cited claims which require certain steps to be performed in the presence of a particular set of claimed circumstances. For example, claim 22 requires that if a selected health care provider has not attended to the patient within a particular time period, then the risk status must be incremented by one level. This result is not optional, and a process that was not operative to perform the "then" statement in response to the "if" condition being met would not fall within the scope of the claim.

Regardless, the Examiner's position is contrary to established Patent Office precedence which note that the use of "optionally" and other language denoting that something may or may not be present or employed does not normally render claims indefinite under the second paragraph of 35 U.S.C. § 112. *See e.g. Ex parte Cordova*, 10 USPQ2d 1949, 1950, 1952 (B.P.A.I. 1988); *Ex parte Wu*, 10 USPQ2d 2031, 2033, 2034 (B.P.A.I. 1988). Further, under the Examiner's line or reasoning, half of the computer software patents which require a certain function to be performed in the event of a certain set of circumstances would be rendered indefinite and invalid. For these reasons, the Examiner's rejections are not legally supported and should therefore be withdrawn.

### III. Claim Rejections - 35 U.S.C. § 103

Claims 1, 2, 6-8, 26, 27, 29-32, and 43-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rao et al. (US 2003/0120134 A1)(hereinafter Rao I) in view of Sato et al. (U.S. Patent No. 5,911,687)(hereafter Sato).

The Examiner's rejection of the recited claims all rely upon an interpretation of items S1101-1111 of Figure 16 to include the feature of, "transmitting directions to respective health care providers to attend the patient, wherein a direction is transmitted to a health care provider in response to non-receipt of a confirmation that a previously directed health care provider has attended the patient within a corresponding time period." (Office Action, p. 5). The Examiner

admits that Rao I does not disclose this limitation. (Office Action, p. 5). It is respectfully submitted, however, that the Examiner has misinterpreted the teachings of Sato.

On page 5 of the Office Action, the Examiner asserts that Figure 7 and related text of Sato disclose the feature of "selecting a health care provider to attend said patient on the basis of said risk status." However, this is not correct. The referenced portions of Sato actually state:

*"S702: the management centre side 104 asks the patient side 101 about the treatment fee and past case history to be registered and the conditions such as the selection standard of a doctor to be registered and acquires information necessary to introduce a suitable doctor. S703: the management centre side 104 searches the electronic hospital doctor database 604... and searches for a doctor in charge for each clinic section under the search condition of case history and desire of the patient."*

This merely discloses that a "suitable" doctor can be selected, presumably on the basis of his or her speciality. There is no disclosure or suggestion in Sato of selecting the doctor *on the basis of a risk status generated from received patient data*, as required by the claims.

Moreover, the Examiner asserts that Figure 16 items S1101 to 1111 and related text of Sato disclose the claimed feature of:

*"Transmitting directions to respective health care providers to attend the patient, wherein a direction is transmitted to a health care provider in response to non-receipt of a confirmation that a previously directed health care provider has attended the patient with a corresponding time period."*

However, Sato makes no such disclosure. The referenced portions of Sato at column 12 lines 48 through column 13 line 27 merely describe how a doctor can access a server of a management centre 104 to download a patient's case record data. The patient accesses the doctor using "the tv-phone terminal 201 installed in the patient's house or the portable tv-telephone 204". The doctor accesses the patient's case record data and displays it on a clinic terminal 304. The doctor asks the patient about the current condition of the disease and refers to the case record data. The doctor displays and processes images from the patient's case data, and "gives a diagnosis and explains the result for the patient." The doctor then inputs the report and diagnosis and adds this

to the case record data. At step S1109, the doctor issues an order of necessary treatment, and the doctor then closes the case record of the patient and transfers it to the management centre side 104.

For these reasons, the Examiner's assertion that the referenced portion of Sato summarized above discloses the claimed feature does not appear to be supported by the record.

In summary, the cited references do not teach or suggest, even in combination, Applicant's claimed invention, and therefore do not render claims 1, 2, 6-8, 26, 27, 29-32, and 43-36 obvious. Applicant therefore respectfully requests that this ground of rejection be withdrawn.

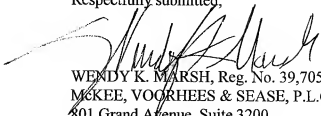
#### IV. Conclusion

It is believed the invention is in a prima facie condition for allowance. Allowance is respectfully requested.

This is a request under the provision of 37 CFR § 1.136(a) to extend the period for filing a response in the above-identified application for two months from October 10, 2008 to December 10, 2008. Applicant is a small entity; therefore, please charge Deposit Account number 26-0084 in the amount of \$245.00 to cover the cost of the two month extension, in addition to \$314.00 for the cumulative addition of two independent claims and four dependent claims. Any deficiency or overpayment should be charged or credited to Deposit Account 26-0084.

No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wendy K. Marsh", is written over the printed name and address.

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